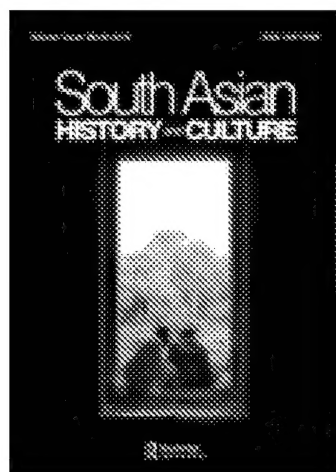


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### Uncertain ground: the 'Ownership Flat' and urban property in twentieth century Bombay

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## Uncertain ground: the 'Ownership Flat' and urban property in twentieth century Bombay

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This article examines the changing meaning of property in Bombay over the twentieth century. It suggests that the Ownership Flat, with ownership rather than tenancy in apartment buildings, was a novel form of property that emerged in the city over the course of the century. The Ownership Flat has become the hegemonic form of dwelling in Mumbai and is the desired outcome of far-reaching urban renewal interventions. Yet while the idea of 'ownership' implies an unproblematic relationship between 'owner' and 'property,' this article suggests that the Ownership Flat represented a major shift in the idea of urban property. In particular, while the Ownership Flat was a cuboid in the air enclosed by walls, ceiling and floor, real property as understood by the law meant land and immoveable property upon land. Further, 'ownership' of flats in Bombay was exercised through the cooperative housing society, a peculiar legal institution where the society as collective owned the building containing Ownership Flats. A conceptual gap emerged between the popular practice of buying and selling ownership flats and the legal framework within which such transactions took place. By excavating the contingent rise of ownership and by examining the unresolved challenges posed to the idea of property by the Ownership Flat, this article offers a new perspective on the emergence of the propertied subject in urban India.

**Keywords:** housing; Bombay; urbanization; rights; civil society

In September 2010, the Government of Maharashtra issued an unusual notification containing a set of rules for what it called 'deemed conveyance'.<sup>1</sup> These rules were appended to the Maharashtra Ownership of Flats Act of 2005 as an amendment.<sup>2</sup> Even by the lofty standards for strangeness set by the Mumbai housing market, the 'deemed conveyance' rules merit a high score. As the name begins to suggest, these rules were designed to effect a 'deemed conveyance' of land from the builders and developers of residential buildings, principally in the city of Mumbai, to the cooperative housing societies formed by the owners of flats and apartments within those very buildings. Astoundingly, the vast majority of cooperative housing societies in Mumbai do not possess title to the lands on which their buildings stand.<sup>3</sup> While individual owners of apartments might possess share certificates that guaranteed their rights to occupy their individual apartments within the buildings, the cooperative societies do not usually have title to the lands upon which their buildings stand. Instead, titles to land either remained with the builders or, even more strangely, in some cases the builders might never have had title to the land to begin with. Builders, for

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decades, had either been unwilling or unable to properly convey the lands to the cooperative housing societies that lawfully should have received such conveyance at the moment at which they had been formed. Since such a lack of title to land severely encumbered the 'ownership' rights of the members of cooperative housing societies, the new rules were designed to 'deem' that the title to land had been properly 'conveyed' to the housing societies within 6 months after the latter had filed the necessary documentation establishing their rights to such title with the appropriate authority. The significance of these rules was that they bypassed the consent of the builder, normally a requirement for conveyance to take place. The deemed conveyance rules, in other words, were promulgated to address a condition where hundreds of thousands of Mumbai's property owners found their property standing, literally, on uncertain ground.

Of the many unusual features of Mumbai's housing market that 'deemed conveyance' suggests, two stand out and will be elaborated in this article. First, the thing that residents in apartment buildings felt they owned – their apartments – was quite different from the conventional legal notion of real property. According to the law, real property consists of land and immoveable property upon land. On the other hand, what people dreamt and fantasized about and bought and sold – what popularly is considered 'real estate' in cities like Mumbai – is the apartment or flat in a multistorey, multi-family apartment building. Such a divergence between a legal definition of real property and a popular sense of property was the outcome of significant changes that took place in middle class housing practices over the middle decades of the twentieth century. In cities like Bombay, middle classes increasingly began to live in self-contained flats in multistorey, multi-family apartment buildings.<sup>4</sup> After Independence and Partition in 1947, this practice spread to other large cities in the subcontinent.<sup>5</sup> After Partition, Bombay's middle classes, for reasons discussed in this article, also significantly transformed their legal relationship to their dwellings. Whereas previously the lower middle and middle classes of Bombay had almost exclusively been renters of tenements and apartments, from the late 1940s onward a new form of occupancy began to proliferate: the Ownership Flat, where occupants purchased and 'owned' their dwellings rather than rented them. Within a few decades after Independence, the Ownership Flat became the object of aspiration for almost the entire spectrum of seekers of housing in Bombay, from residents of slums and *chawls* to the upper classes. Although not everyone lived in one, the Ownership Flat, to reverse the classic formulation of Ranajit Guha, had hegemony without dominance.

A historically novel form of property in South Asia, the Ownership Flat introduced an idea of property that eluded existing legal definitions of real property. Whereas real property in legal terms had traditionally referred to land and immoveable property upon land, the Ownership Flat in a multistorey, multi-family apartment building was a cuboid in the air surrounded by a ceiling, walls and a floor. To add to the confusion generated by this built form – and this is the second important aspect of the Mumbai housing market suggested by the deemed conveyance rules – the legal framework used to establish and assert property rights in the Ownership Flat was the cooperative housing society, a peculiar legal institution also pioneered in the city that emphasized collective rather than private ownership of property. Further, the nature of the collective in Mumbai's cooperative housing societies was defined in a particular way: because cooperative legislation was initially framed during British rule in the early twentieth century, and because the British saw their subjects as members of communities rather than as individuals, cooperative societies were permitted to discriminate on the basis of community.<sup>6</sup>

Understanding the origins of agrarian private property in land has been a central feature of South Asian scholarship on property since control over the collection of land revenue

was the mechanism through which the East India Company became a colonial power.<sup>7</sup> While we now also have a good understanding of the particular ways in which indigenous cultural practices transformed liberal ideas of urban property in colonial India, the focus has been on 'real property' understood as land and immoveable property on land.<sup>8</sup> Much of the scholarly writing on present-day Mumbai has a strong explicit or implicit interest in property. Since the Ownership Flat in multistorey apartment buildings has become the desired outcome in two far-reaching measures of urban renewal underway in the city – the development of slums and the reconstruction of old and dilapidated buildings through incentives offered by the state – it plays a prominent role in writings on the ongoing physical transformation of the city.<sup>9</sup> More generally, writings on broader changes within the city lay great emphasis on the significance of speculation in Mumbai's property markets.<sup>10</sup> Finally, the issue of legal and illegal occupation of land is the lynchpin of important recent discussions on the meanings of citizenship in urban India.<sup>11</sup>

While writings on property in colonial India are sensitive to the ways in which indigenous cultural practices transform liberal ideas of ownership of property, there is a tendency in writings on the present-day city to accept the 'settled' nature of ownership and assume that the meaning of owning property is self-evident.<sup>12</sup> Further, there is not a sufficient appreciation of the changing meanings of real property in Mumbai as people increasingly lived in multistorey, multi-family dwellings. Does 'property' refer to land? Or buildings? Or apartments? As adumbrated earlier, this article will argue that the seemingly commonplace expression (and aspiration) 'to own property' came to mean something very different in Bombay in the decades following Independence and Partition. Beginning by showing the highly contingent and uncertain trajectory through which ownership of housing became the hegemonic mode of occupancy in postcolonial Bombay, the article suggests that ownership remains an unstable concept – on uncertain ground as it were. In excavating this uncertain and insecure foundation to ownership, the article underscores the historically constituted nature of social practices such as the ownership of property and thus provides a different perspective on the meaning of citizenship in postcolonial urban India.

The Ownership Flat was unknown in Bombay's housing scene in the period before Independence and was first tentatively discussed in the Report of the Housing Panel of the Committee appointed to consider the Greater Bombay scheme in 1946.<sup>13</sup> For a period of about 16 years following Independence in 1947, ownership of flats in buildings became an increasingly common mode of occupation, but there existed no legal and conceptual vocabulary to apprehend this novel practice. As a result, malpractices proliferated in the trade in buying and selling flats, some of which will be discussed below. As complaints mounted, state authorities hastened to come to terms with the problem by the late 1950s. It was only after the Committee appointed to 'Enquire into the Problems of Flats on Ownership Basis' published its landmark report in 1962<sup>14</sup> that the Maharashtra legislature subsequently passed the Maharashtra Ownership of Flats Act of 1963 (subsequently MOFA), which sought to establish the Ownership Flat as a distinct legal entity, equivalent to but not the same as land or immoveable property. The period 1947–1963 thus brackets the first appearance and subsequent legal consolidation of the Ownership Flat. However, the legal framework for ownership was provided by the cooperative housing society, established earlier in the century, while the challenges posed by the Ownership Flat to ideas of real property endure into the present day.

With such a temporal framework, the article proceeds in four sections. The first section discusses the origins of the cooperative housing society and argues that cooperative housing was not conceived principally with ownership in mind. The second section explores changes in Bombay's housing scene from the late 1940s onward and indicates some factors

that disincentivized new construction for rental housing. Once ownership became desirable after 1947, the cooperative housing society offered an existing legal framework through which to legally express the ownership of property in the form of an apartment in a multistorey, multi-family building. Having established the contingent emergence of the Ownership Flat, the article moves in the third section to indicating the many ways in which ownership of property in the form of flats was highly qualified by a variety of constraints, especially in the period between 1947 and 1963. The fourth section discusses the ongoing uncertainty of the meaning of property in the form of the Ownership Flat, and the article concludes by reflecting on the implications for ideas of citizenship in independent India.

### **The Bombay cooperative housing society**

Cooperative societies in India were established in the early twentieth century and were modelled after the English societies that had been formed from the mid-nineteenth century onward. Widely understood as a middle way between socialism and the ravages of the market system, cooperative societies in India had another important feature promoted by a colonial state that saw India as populated not by individuals but by communities: the legislation permitted them to discriminate on the basis of 'community'.<sup>15</sup> Initially, cooperative societies were principally agrarian in their concerns, with an emphasis on producer coops and rural credit coops. But in the 1910s, a group of housing activists in Bombay seized upon the cooperative society as a framework within which middle class urban Indians could appropriate the building society model pioneered in England and Germany. The first cooperative *housing* society in Bombay – and probably in India – was the Saraswat Cooperative Housing Society, formed in 1916, and whose membership was restricted to Saraswat Brahmins.<sup>16</sup>

Housing activists such as Rao Bahadur S.S. Talmaki of the Saraswat community in Bombay were appreciative of the building society model, which had emerged over the course of the nineteenth century as a successful mechanism for mobilizing capital from among lower middle and middle class investors while also delivering dwellings on ownership basis to members of these same populations.<sup>17</sup> Talmaki conducted an extensive study of the German and British experiments with co-ownership of housing, but noted that for the majority of Bombay's lower middle classes, even 20% of the cost of a house, which was the customary down payment in European building societies, was an improbably large sum. Further if the horizon of repayment was 5–15 years, as was customary in Europe and the United States, then the monthly payments of a prospective cooperative society member would be significantly greater than the rents for a unit of comparable size – as much as double the rent in fact. To address the second of these problems, Talmaki proposed the following: why not increase the horizon of repayment from 10 to 15 years to a significantly longer period like 50–60 years? The goal thus would be to keep monthly payments at roughly the same level as the rents that Bombay's lower middle classes were paying.

To address the first problem – that of the large down payment involved – Talmaki proposed that the initial down payment be reduced from 20%, but still kept significant enough to ensure that members had some 'stake' in the houses and thus worked on its upkeep. Subsequently, small premiums were to be added to the monthly 'rents' until the member's contribution added up to 20% of the cost of the flat, after which the member only needed to pay rent.<sup>18</sup> Eventually, the solution adopted by the Saraswats was one where members made an initial down payment by purchasing shares of the Society. Dividends on these shares were retained and accumulated by the Society until each member's aggregate contribution equalled one-fifth to one-third the cost of the units they occupied, after which



point they were paid out to members as dividends. Thus, the Saraswats adopted the limited equity model, where the member had a 20–30% ownership stake in the flat, and this model was adopted by other cooperative societies as well.<sup>19</sup> In the view of the Saraswat Society, there was no intrinsic superiority to owning flats in their entirety:

Though the tenant-members always remain tenants they are in no worse position than if they owned the flats independently. For, they pay by way of rent only a proportionate share of the outgoings which they would have had to pay if they owned the flats independently. On the other hand they are in no way tied down to the flats occupied by them, and can leave them at short notice and transfer their investments to the incoming tenants.<sup>20</sup>

Even though the arrangement was legally a ‘tenancy at will’ and thus susceptible to termination by the cooperative society, the custom in fact was for tenants to occupy their dwellings for as long as they wanted. The system thus appeared to convey the stakeholder benefits of ‘ownership’ while still in the realm of affordability for the lower middle and middle classes, and also offering the added benefit of flexibility and mobility. These societies resembled the limited equity and no-equity cooperatives that began to appear in the United States where the emphasis was on controlling rents and providing affordable housing, while disseminating the improving effects of stakeholder status.<sup>21</sup>

The Bombay cooperative housing society of this period in the 1910s and 1920s had more to do with stakeholder status than with establishing ownership. As J.P. Orr, Chairman of the Bombay Improvement Trust and one of the strongest supporters of the cooperative movement in its early years in Bombay, put it:

in England, an immense amount of good has resulted from the building society movement and especially from the extension of that form of cooperative building society known as ‘Co-Partnership Tenants,’ which is specially suitable for lower middle class people who can never hope to be individually owners of houses.<sup>22</sup>

Within this model then, members of a society had to put up a very small percentage of the cost, and the society acquired a loan on the basis of those deposits. The society became the owner of the building and the members became tenants, paying a monthly ‘rent’ that covered the cost of the interest on the loan, perhaps but not necessarily a small portion of the principal, and maintenance costs. That is why the system was called a ‘Tenant Co-Partnership scheme’. Cooperative housing society legislation – first the 1912 and then the 1925 Bombay Cooperative Societies Act – was phrased in this way and the nature of the legislation even today emphasizes the collective nature of the enterprise: within the cooperative housing society, each individual member does not own anything – he or she has the lifelong and transferable right to occupy a particular unit as long as he or she complied with the rules of the society. The society, as a collective of individuals, owned the building and either owned or leased land.

One key feature of this model was the need to procure a loan to finance the majority of costs of land acquisition and construction. The Saraswats were successful because they were able to get a generous loan of Rs 24,000 from Sir Prabhashankar Pattani at a very favourable rate of 4%. Subsequent cooperative housing societies of the late 1910s and early 1920s, such as the Parsis in Dadar Parsi Colony and the Catholics in Salsette, depended upon loans from wealthy Parsis and Catholics. Indeed, in the absence of a capital market within which to raise funds for housing in this period, the ability or inability to secure loans from wealthy members of the community seems to have been the principal factor determining the success or failure of a cooperative society.

For three decades following the formation of the Saraswat Coop Housing Society, the cooperative housing society enjoyed only intermittent success. At various moments after 1922, boosters of the cooperative housing movement pleaded for more support from the state. In the Third Bombay Provincial Cooperative Conference held in Bombay city in 1924, for instance, B.V. Jadhav called upon the Bombay government to improve services to the suburban districts of Andheri and Jogeshwari, where many of the cooperative housing societies were.<sup>23</sup> Jadhav also called upon the Bombay Improvement Trust to extend its ground rent holiday on societies in the Trust's Dadar–Matunga suburban estates from 2 to 4 years.

The problem was that the cooperative housing movement had gained in popularity during the boom years of 1916–1922, when the prospect of unscrupulous rack-renting landlords had made the possibility of stable rents in perpetuity – promised by the cooperative housing society – extremely attractive. Once the land price boom ended in 1922, however, landlords were less able to increase rents since land was not perceived to be a scarce commodity as it had been during the boom.<sup>24</sup> Such a depression in land prices combined with the dramatically increased availability of building materials in the 1930s to create a building boom, which in turn compelled landlords to lower rents, thus making cooperative housing societies less appealing in comparison to rentals.<sup>25</sup> If anything, cooperative societies built during the boom years of 1916–1922, when both land and materials were expensive, looked distinctly unattractive in this setting since their rents were pegged to their (high) capital expenditures.<sup>26</sup> This in effect was the plea of a deputation that waited on Morarji Desai, then Revenue Minister (and future Prime Minister of India in the 1970s), in 1937. Complaining that cooperative housing societies had been compelled to lower their rents ‘in competition with the private buildings which are being constructed rapidly in Bombay’, the deputation warned that some societies faced wholesale liquidation and urged the government to reconsider the terms of their loans to societies.<sup>27</sup>

Bombay remained, in the decades between 1918 and 1947, overwhelmingly a city of renters in buildings put up by private enterprise. The main issue was that the prospective middle and lower middle class constituency of cooperative housing societies appeared to have valued the flexibility that rental housing offered over the stability and relative inflexibility of cooperative housing. As late as 1946, the Housing Panel of the Committee appointed to inquire into the Greater Bombay Scheme reported that the cooperative housing society system had faced difficulties, principally in the high cost of capital, and accordingly had not flourished widely.<sup>28</sup>

The Report of the Housing Panel was an important document since it presented a snapshot of the housing scene at the cusp of Independence and thus on the cusp of the changes in housing occupancy patterns discussed in this article. Most significantly, the Report opened up, for the first time, the conceptual possibility of outright ownership of units in multi-family dwellings. While endorsing the overall excellence of cooperative housing, the Report underscored the differences between two varieties of cooperative housing societies: the tenant-copartnership scheme, where the occupants remained tenants, and the tenant-ownership scheme, where the occupants owned their homes.<sup>29</sup> The Report noted that the latter system was more common in situations where the dwellings in question were houses, while the former system seemed the only option in situations where people lived in multi-family dwellings with many occupants. While noting what it called the ‘impracticability of granting ownership to occupants of a building consisting of many tenements’, the Report also speculated on the overall superiority of ownership over tenancy, observing that ‘the homes that are owned are generally better looked after, maintained and preserved, and as ownership gives a peculiar pride in homes and surroundings making for better citizenship.’<sup>30</sup> Here the Report appeared to pose the problem of housing from

a different point of view. Instead of the customary emphasis of housing discourse on the occupants of dwellings, the Housing Panel chose to consider the housing problem from the perspective of the city and the nation. From this perspective, ownership was believed to elicit better care for the appearance of buildings and even better citizenship. The Panel thus recommended tenant-ownership as a desirable option even for lower income residents of multi-family dwellings. The Report suggested the introduction of long-term monthly payments over 25–30 years, where payments included ‘rent-cum-installment’, culminating in ownership of the dwelling.<sup>31</sup>

### **From tenant co-partnership to ownership**

The Report of the Housing Panel thus introduced, conceptually, the idea that ownership was superior to tenancy. But what exactly did ‘ownership’ mean in the context of multistorey, multi-family dwellings? And how was it to be asserted? While the Housing Panel’s Report valued ownership over rentals, the actual emergence of the Ownership Flat was gradual and highly contingent. Indeed, the Housing Panel’s Report underscored two important features of the Bombay housing market up until 1946. First, the way in which the city was still predominantly a city of rentals, and second, the manner in which, as late as in 1946, the cooperative housing society could entail a variety of forms of occupancy ranging from rentals, to limited equity, to outright ownership. Of these three, ownership was only to be seen in societies consisting of freestanding houses (mostly outside Bombay) and was unknown in multistorey, multi-family dwellings. Over the course of the 1950s, however, as this section will show, both these attributes of the housing market were transformed. First, new investment in housing was increasingly directed at constructing buildings for cooperative housing societies from the late 1940s onward. Second, the range of forms of occupancy in cooperative housing societies narrowed from the variety displayed earlier, and cooperative housing societies increasingly became associated with ownership-based occupancy.

Four features of Bombay’s housing market in the 1940s, some of which served directly to disincentivize rental housing, created the perception of a housing crisis and set the stage for the rise of ownership.<sup>32</sup> The Rent Control Act of 1947 is usually invoked to explain all the peculiarities of the Bombay housing scene, including the diminishing availability of rental housing in the post-Independence period. As the argument goes, following the introduction of stringent rent control regulations in 1947, investors in buildings were more likely to turn away from rental buildings and towards investments that placed fewer curbs on the accrual of value.<sup>33</sup> Yet, there had actually been some form of rent control in place in Bombay since 1918, except for an interval of 11 years between 1928 and 1939. Since ownership did not begin to supplant rentals until the 1950s, we must conclude that rent control was an important and necessary condition, but not sufficient for understanding the rise of ownership-based occupancy.

Since the passing of the wartime Government of India Act at the start of the Second World War, the state had imposed acute controls over the supply of critical building materials like steel and cement. After the war and Independence, these controls were not relaxed but rather assimilated into the changed priorities of the Nehruvian state. From this time onward, anyone seeking to purchase cement – even for some minor repair in their own house – needed to apply to municipal authorities for a ‘certificate’ before becoming eligible to purchase. Even the Bombay Municipal Corporation, seeking to celebrate its assimilation of a large area to the north of city limits and its subsequent transformation into the Municipal Corporation of Greater Bombay in 1956 by adding a new Victorian Gothic wing, was forced to ‘slow down’ the plan due to the shortage of cement.<sup>34</sup> From 1940 onward,



thus, the building industry in Bombay faced a tightened supply of building materials that continued into the Nehruvian era. Such shortage of building materials added to the popular perception that housing was becoming increasingly scarce.

The resulting ebb in the supply of new housing stock was compounded by the Bombay Provincial government's imposition of the Urban Immoveable Property Tax in 1939. This new levy severely discouraged a wide range of investors from investing in residential apartment buildings, which had been the principal mechanism through which new rental housing stock was added since the land price boom of 1916–1922. Claude Batley, mandarin of the Bombay housing scene for 40 years, remarked that the Tax had 'proved a very severe set back in the provision of [rental] housing throughout Bombay, except for a few luxury flats and private residences'.<sup>35</sup> Writing in 1948, Batley was referring here to the effects of the Tax over the 1940s on rental housing, the only existing form of multistorey, multi-family housing in the city up until that point. Faced with the prospect of paying the Urban Immoveable Property Tax on any rental building they might erect, investors were drawn instead towards arrangements where they might exit the transaction after putting up the building and transferring it to a cooperative society. Such cooperative societies, as collective owners of buildings, were not subject to the Urban Immoveable Property Tax.

If rent control, control over building materials, and tax policies all served to curtail the supply of new rental housing, then the pressure on the existing housing stock was compounded by a significant shock on the demand side as Bombay experienced a massive increase in population over the decade of the 1950s. Partition in 1947, followed by an influx of refugees from Sindh and Punjab, constituted the immediate shock; but a more broad-based diversification of the industrial and commercial base of the city's economy beginning during the Second World War – with significant growth especially in petrochemicals and electricals – meant that increasing numbers of migrants were attracted to the city looking for work. Such a combination of factors served to restrict the supply of new housing, especially rental housing, in the context of greatly increased demand for housing. In turn, these conditions served as the context within which ownership began to acquire increasing popularity.

While the demand for housing had greatly increased in the years following the Second World War, and while the above-mentioned factors restricted the supply of traditional rental housing stock, the Ownership Flat as a concept emerged only gradually in the 1950s. Thus, in the years following Independence when the Government of India undertook urban housing as an issue in its developmental agenda, the cooperative housing society offered itself as an avenue through which the state could execute this item on its agenda. In doing so, the state embraced the methods pioneered during the early years of cooperative housing in the 1910s: low interest lending and help in land acquisition. While the bulk of state support was intended for the urban working classes, the Centre also envisioned support for the lower middle and middle classes. The First Five Year Plan recommended that the Central government provide money to the State governments, which in turn would make these funds available to cooperative societies through the various State cooperative organizations. The Planning Commission pointed out that

we lay special emphasis on cooperative housing societies not only because they can mobilize private capital, which would otherwise become dormant, but because they open the way for aided self-help, in the construction of houses, which should be encouraged for reducing the cost as much as possible.<sup>36</sup>

The Planning Commission here promotes 'aided self-help' through cooperative housing as a housing strategy that could at once mobilize private capital, provide housing for middle classes and create a stakeholder class within the urban population. The goal thus was not

to promote ownership as such, but rather to create a stake-holding citizenry through 'aided self-help'. At this stage, the Government of India did not imagine that such cooperative housing societies would be ownership based, but rather that they would entail some form of limited equity arrangement.

In the late 1940s and early 1950s, cooperative housing societies became increasingly popular. A study of the workings of the Rent Act conducted in 1952 found that while 401 rooms in apartments had added to the city's housing stock by coop societies in 1948, this number climbed to 465, 1238 and 1040 rooms in the years between 1949 and 1951.<sup>37</sup> If the Saraswats and the Parsis had been early pioneers of cooperative housing in the late 1910s, then displaced Sindhis and Punjabis crowding into refugee camps in Bombay after 1947 became the beneficiaries of government subsidies for cooperative housing societies. While the government at the central, provincial and municipal levels took measures to rehabilitate Displaced Persons, it was also acknowledged that in these refugee camps, the Displaced Persons had 'grown into the habit of depending on the Government for the satisfaction of even their smallest wants'.<sup>38</sup> In this context, the extension of support through cooperative housing societies appeared to resolve the tension between providing some support for Displaced Persons, on the one hand, and weaning them away from dependence on state handouts, on the other. Thus, in addition to direct construction of housing for refugees, the provincial Government undertook to extend financial assistance to Displaced Persons by extending loans on generous terms as well as facilitating land acquisition and securing the release of building materials.<sup>39</sup>

Sindhis, more than any other community in this period, embraced the cooperative housing society. It was through the variations introduced by Sindhi entrepreneurs that the cooperative housing society gradually became synonymous with ownership-based form of occupancy over the course of the 1950s. One of the first Sindhi cooperative housing efforts put up two complexes of several buildings each in Cumballa Hill. Shyam Niwas and Nanak Niwas were societies of the classic form described earlier, where a group of individuals from the same community got together and formed a cooperative society. They would then proceed to acquire land (this was a key step: Shyam Niwas got land from one of the mansions of Dinshaw Petit), engage an architect and a contractor. They usually played a role in designing the structure, which might be tailored in some ways to the needs of their community. Shyam Niwas, for instance, contained a provisions shop that supplied Sindhi foods.<sup>40</sup>

At a certain point – probably around 1951 – some enterprising Sindhis reversed the process outlined above. Instead of a constituted community or cooperative society initiating the process, an entrepreneur might himself or herself initiate the process by identifying a few persons who might be interested in a flat. Using the initial deposits of this group, the entrepreneurial figure – now known as the promoter – would begin the process of acquiring land and then would wait for word to spread, usually within the Sindhi community, and for other applicants to approach, which is what would make the completion of the project possible. Upon completion, the promoter would 'convey' the land and the building onto the group of buyers, who were then required to constitute themselves as a cooperative housing society within a stipulated period of time.

Early promoters from the Sindhi community included the subsequently famous film producer G.P. Sippy, R.J. Advani, Jethi Sipahimalani and Bhagwan Gidwani. G.P. Sippy was aware of how strange and new this kind of ownership in a multistorey dwelling was – 'so strange, one man's floor is another man's ceiling. If I hammer a nail into my wall, my neighbour can complain that I am hammering into his property'.<sup>41</sup> Sippy was able to use some of the money he made from his first buildings to produce *Sazaa* in 1951.

From this stage, it was a short but revolutionary step to commercialize the entire operation. Whereas the early promoters mentioned above operated within the Sindhi community, from the mid-1950s onward, promoters such as Ishwardas Bhatia opened up the potential client base and started putting up buildings for anyone who wanted an ownership flat. The promoter's key inputs included knowing how to acquire land – both when and where it was available and how to negotiate the bureaucracy in order to get it – and to be connected to networks of people with the resources to invest in a flat and thus provide the seed money. It was about this time, in 1956, that the undisputed king of Bombay real estate, Gopal Raheja, entered the business. He would subsequently transform the business and become Bombay's first developer, with the capital and connections to oversee the entire process himself. Without the need for the initial group of investors, he was able to build on an unprecedented speculative scale by the 1970s. By the end of the 1950s, thus, Sindhis had firmly established themselves as the pioneers in a new form of cooperative housing society consisting of 'flatowners' instead of 'tenant co-partners'. In the list of individuals interviewed by the Ownership Flats Enquiry Committee, Sindhis played a prominent role. Of the 33 persons interviewed, 13 had Sindhi last names, indicating that almost 40% of the respondents were Sindhis: an astonishingly large proportion, far greater than the share of Sindhis in the total population of Bombay.<sup>42</sup>

Once the process had been entirely commercialized as described above by the late 1950s, the Ownership Flat had emerged as a recognizable entity, synonymous with the cooperative housing society. An early indication of the narrowing of the range of occupancies in cooperative housing societies to mean ownership-based occupancy was provided in a study of Greater Bombay undertaken in the late 1950s. In his study of Greater Bombay, C. Rajagopalan sought initially to assess the role of cooperative housing societies in the residential patterns of suburban Bombay. Quickly, though, Rajagopalan reported that his group had to 'give up the attempt, as [they] were led to feel that the information so collected would not only be not faithful but on the contrary be misleading'.<sup>43</sup> Although a cooperative housing society is normally to be understood as a group of individuals coming together to provide housing for themselves through their collective effort, and thus aided by the government as indicated above, Rajagopalan recorded that in fact 'such societies were few and far between'. Rather:

In the majority of cases, these societies turned out to be nothing more than an association of the residents of the buildings, *who had purchased their houses under the ownership system. The object of forming such societies . . . was to take advantage of certain concessions to which societies . . . were normally entitled.*<sup>44</sup>

As described above, such concessions would have included receiving loans on favourable terms for the leasing of land and for construction of the structure. In some cases, especially where displaced persons – principally Sindhis – were concerned, the state might itself acquire the land and make it available to prospective buyers. Yet, while government subsidies to cooperative societies were initially an incentive for many seekers of housing, the lax manner in which the subsidies were disbursed played an important role in further tilting patterns of occupancy within cooperative housing societies from tenancy and limited equity towards outright ownership. Rajagopalan noted that the government's subsidy was often erratic, causing delays to the construction process. As a result, several cooperative societies had rid themselves of their obligation to the government and, having raised loans on their own, had themselves seen the construction through to completion.<sup>45</sup>

Rajagopalan, whose perspective was strongly Nehruvian-nationalist, expressed his dismay that the benevolent collectivism of the cooperative movement was being subverted in practice and that mere 'ownership' was the ultimate goal of the residents of many of these cooperative housing societies. On a discursive level, though, what was extraordinary in Rajagopalan's complaint was his use of the idea of ownership. He deployed a model of occupancy right – that of 'ownership', previously used with respect to land and immoveable property on land – to characterize a different kind of occupancy, that of multiple families living in apartment buildings. His dismissal of cooperative housing societies thus obscured a minor revolution in housing patterns: the fact that 'ownership' was now becoming a significant mode of occupation.

Rajagopalan's account underscored the manner in which cooperative housing societies were increasingly associated with outright ownership rather than the limited equity model through which they had originally been conceived. In addition to the implications of rent control and the Urban Immoveable Property Tax discussed earlier, various other advantages of building for ownership rather than rental became apparent to investors, further tilting new building construction away from rentals and towards ownership-based buildings. For instance, certain features of the Income Tax code turned investors away from rental housing and landlord status and towards building for cooperative housing societies. A person who invested in a building and became a landlord faced a situation where incoming rents were taxed at a higher rate as 'unearned income', whereas an investor who put up a building that was sold off as ownership flats enjoyed a lower rate since such income was treated as 'earned income'.<sup>46</sup>

The fact that buildings consisting of ownership flats did not require a large initial outlay was another factor that attracted investors. A prospective builder could commence work on a building once he or she had a few purchasers who had put down their deposits. He or she could then proceed with construction as and when more buyers came on-board, put down their deposits and paid subsequent instalments. Even better, builders of ownership buildings for cooperative societies did not have to amortize their returns over years and decades in the form of rents, but realized them upon completion of construction in the form of the purchase price.<sup>47</sup> This very feature of construction activity was what made the Ownership Flat a feasible alternative for some middle class seekers of housing in the 1950s. In the absence of bank loans for housing or any mortgage system, it would normally have been highly unlikely that a middle class salary-earner could afford to buy a flat outright. However, the stage-wise financing and construction process described above meant that a prospective flat buyer needed to put down only an initial down payment. Subsequent payments became due as construction proceeded: a certain percentage upon completion of the plinth and each successive floor of the building. This gave the prospective buyer up to 2 or 3 years to pay for the flat and made it somewhat more affordable than it might otherwise have been. Of course, such a system posed its own risks, as illustrated by the case of a builder by the name of Kantilal Trivedi, arrested by the police in 1957 for having 26 cases pending against him.<sup>48</sup> This Trivedi had a plot of land leased in his wife's name. He had put up the 'base of a structure' and had taken deposits from several people promising them 'ownership flats'. He had evidently not succeeded in raising quite enough money to continue with construction, attracting complaints from frustrated would-be flatowners. Despite the 26 cases pending against him, he had 'once again started advertising offering flats on an ownership basis against advance deposits'. The occasion of his arrest was the complaint of his latest victim, who alleged that Trivedi had taken Rs 2000 as deposit but had never delivered the promised flat.

Two patterns thus characterized Bombay's housing scene in the 1950s: the flourishing of cooperative housing societies and the gradual identification of the cooperative housing society with ownership-based occupancy rather than some form of limited equity occupancy. These patterns meant that rental housing was becoming increasingly scarce. As indicated above, the Rent Act increasingly directed investors away from rental buildings. New construction was principally directed at ownership-based buildings in the form of cooperative housing societies.<sup>49</sup> Such rental buildings that did come up were designed for the high end of the market and often rented to companies, with the expectation that it would be easier to periodically raise rents (and also expect regular payment of rents) from such tenants.<sup>50</sup>

If new construction was veering in the direction of ownership-based buildings, then renting apartments in older properties became increasingly difficult over the 1950s with the proliferation of the *pugree* system in the face of strict rent control. With strict rent control, it became common practice for residents of rent-controlled apartments to trade in their protected right to pay restricted rents by demanding *pugree* – an illicit black money payment – in exchange for the transfer of the rent receipt (that is, the transfer of the right to pay restricted rents). The landlord or 'owner' of the property would receive about 25–30% of this *pugree* payment. New migrants to the city seeking housing in post-independence Bombay thus faced an impossible situation: either they made large black money payments in the form of *pugree*, often amounting to more than 50% of the market value of the flat, for the privilege of paying protected rents, or they needed to come up with the down payment for an ownership flat. Since the *pugree* payment did not result in building of equity (except in the form of potential receipt of future *pugree* payment) and since middle class housing seekers were not in a position to find large sums of black money to begin with, the ownership model increasingly appeared to be the less oppressive of the two available options. This is not to suggest, of course, that all migrants to the city were able to afford ownership flats. Rather, the preceding account suggests reasons why ownership became increasingly hegemonic as a housing option in the 1950s. Indeed, as Ramachandran and Pillai observed following their survey of the housing scene in the 1960s, the logic of new building construction in a rent-controlled environment meant that 'construction activity has come to be channelized towards a particular class of people who can afford to buy ownership flats'.<sup>51</sup> Working class, lower middle class and even many middle class seekers of housing from the 1950s onward were increasingly shut out of the rental market and thus of the formal housing sector, since they could not hope to purchase ownership flats. These groups were compelled to turn to the informal housing sector where, by definition not subject to the constraints of the Rent Act, a thriving rental market developed to meet the needs of these groups in the proliferating informal settlements of the city.

Over the course of the 1950s, thus, the cooperative housing society had become synonymous with ownership-based occupancy to yield the Ownership Flat. Launched as a high-minded exercise in collective living in the 1910s, the cooperative housing society had now become a mere legal carapace protecting the soft flesh of property ownership. This was illustrated in the physical instrument used to express ownership of a flat in a cooperative housing society. Whereas previously shareholders in a society would hold a number of shares corresponding, logically, to their equity stake in the society, with the proliferation of ownership and the decline of limited equity, five shares became the conventional physical expression of the ownership of a flat in a society.

Cooperative housing societies were not the only legal mechanism through which ownership was pursued in the years after decolonization. For instance, one alternative was the 'Company System', where purchasers of flats constituted themselves as a company, which



owned the building.<sup>52</sup> Flatowners, as shareholders of the Company, owned their flats by virtue of owning a portion of the company. The precise meaning of such ownership was determined through the Indian Companies Act. The advantage of the Companies Act was that only seven shareholders were required to form a public company and only three shareholders were required for a private company. This was especially advantageous in smaller buildings – former houses perhaps – that were converted to flats on ownership basis.

Ownership of flats – with their specific organization of space – posed specific kinds of problems, though, which the Companies legislation was not quite equipped to deal with. The principal problem with the Companies Act was that it could not tackle the complexities raised by ownership of property in the context of a multistorey apartment building. Who would manage the common spaces? What recourse was available for the resolution of disputes? The Companies Act offered only the courts as recourse. The cooperative housing society – regulated by the Cooperative Societies Act of 1925 – offered the office of the Registrar of Cooperative Societies, created specifically for the resolution of disputes. More generally, since cooperation was envisioned and legislated as a collectivist project of ‘self-help’, the Cooperative Societies Act had a strong mechanism through which the problem of common property could be addressed.<sup>53</sup>

#### **The ownership flat as property**

In the preceding sections, I have traced the rise of ownership-based occupancy and shown how the cooperative housing society, through a contingent set of circumstances, came to provide the legal mechanism through which ownership was asserted. The rise of the Ownership Flat was not by any means a seamless story of the triumph of a certain kind of property. During the initial years of its surging popularity in the 1950s, the peculiar nature of this kind of property lent itself to all kinds of trickeries, frauds and scams. The very construction process for new buildings described above – where builders would take deposits, begin construction and then proceed as and when they secured new buyers – meant that problems could easily arise in this staggered financing process. Another unusual aspect was that buyers were not receiving a piece of land or a structure upon land, the customary forms of immovable property. Rather, they expected to receive a cellular unit with walls, floor and ceiling that could be suspended dozens or hundreds of feet above the ground within a building, which in turn stood upon a plot of land. More generally, buyers of ownership flats found that their ‘ownership’ rights were severely constrained by a variety of legislations, especially rent control legislation.

Oddly, most of the victims of malpractices were not from among the poor or uneducated sections of the population, but rather, as the Ownership Flats Enquiry Committee musingly observed, ‘belong[ed] to an intelligent section of the population, viz. doctors, lawyers, Government servants, businessmen, etc.’<sup>54</sup> The Committee’s inquiry into how such ‘intelligent’ groups had fallen victim to fairly rudimentary kinds of fraud yielded two explanations: first, that the builders had succeeded in generating a feverish aura of scarce supply, such that prospective buyers felt compelled to rush into agreements without fully understanding what the agreements actually promised. More importantly, much of the confusion resulted from the novelty of this form of property, and the fact that prospective buyers did not really know what kind of sureties to look for and demand in an agreement.<sup>55</sup>

One whole class of problems originated in the weak nature of the agreements signed by prospective buyers. The defects in these agreements were quite astounding: for instance, many agreements were merely ‘agreements to sell’ and not actual deeds of conveyance, which meant that they did not give flat purchasers actual title to their flats, but only the

right to protect their occupancy against third party claims.<sup>56</sup> Another class of problems originated in the failure to specify the nature of the organization of flatowners to whom title to the land and buildings would ultimately be transferred, or in failures to actually facilitate and execute the formation of such an organization. Such cases underscored the peculiar nature of the Ownership Flat: whereas individuals might purchase flats, it was actually the collective that owned the building and had title to the land. Each cooperative society member thus had a doubled legal existence: as an individual flatowner, on the one hand, versus as a member of the collective that owned the building and had title to the land. Yet another class of malpractices revolved around the illegal disposal, by the builder, of 'common property' that should, legally, belong to the cooperative society once the building has been handed over to it. For instance, the promoter builder might sell off the terrace of the building to one individual even though the terrace was actually the property of the society; or the builder/promoter might sell off the garages or other such common rooms on the property, whereas actually only the society was permitted to do this. This opened up the problem of 'common space' and who had jurisdiction over it. Yet another class of malpractice involved discrepancies between the originally proposed structure and the final structure – cheating between 'built up' area and 'carpet' area, for example, or altered floor plans, or cheaper materials.

However, the single biggest problem, which drove the Government of Maharashtra to launch a committee of inquiry and pass the landmark MOFA legislation in 1963, which resulted in the coalescence of the ownership flat as a legal entity, had to do with the conveyance of land. Very often builders would convey the building itself onto the society, but neglect to convey the land. What is amazing is that most societies did not notice this. Because they had been given possession of the structure, it appears that they simply didn't bother to ensure that they also had the title to the land. In the minds of the new flatowners, their property was a cuboid in the air somewhere – on the second or third or fifth floor. In the midst of the great scramble for property beginning in the late 1940s, Bombay's would-be flatowners did not acquire any land.

Some implications of the failure by builders to convey land to cooperative housing societies – a surprisingly literal indication of the divergence between the notions of property-as-land and property-as-Ownership Flat – will be explored in Section 'Land, property and the ownership flat'. However, even setting aside the malpractices associated with the buying and selling of flats, the notion of ownership of property consisting of dwellings in multistorey, multi-family structures was severely constrained by a wide range of other legislations already in place. Once this is appreciated, then property rightly comes to be understood as a bundle of rights constrained by other rights and obligations. I turn now to consider, in depth, the case of the Bhatia Cooperative Housing Society.<sup>57</sup> Entailing the passage of a structure from a tenanted *chawl* in the early twentieth century on Bombay Improvement Trust lands to a cooperative housing society, this important case illustrates the ways in which the meaning of property in the form of the Ownership Flat was constrained by other legislation.

The land was on the Improvement Trust's Princess Street Estate in the old part of the city. In 1908, the Trust auctioned off three adjacent plots and the winner of the auction was one Sitaram Luxman, who in compliance with the various conditions imposed on Trust leases, put up a chawl-type building on the plots. According to the conditions of the lease, Sitaram Luxman had to put up a building within a stipulated period (to prevent 'land hoarding' and speculation), had to spend a minimum sum on the construction (Rs 50,000 in this case), had to have the building designed by professional architects and had to have the building conform to specific drainage, sewerage and construction standards. In addition,

the Trust was permitted to conduct regular inspections of the premises to certify that such conditions were being met.

Only after the building had been erected to such specifications did the Trust transfer title to the land and the building onto Sitaram Luxman as Lessee for 999 years. In addition to the length of the lease, Luxman also had the benefit of a nominal ground rent of Re 1 for the first year and the rent of Rs 2914 for each subsequent year. In 1925, the substantial properties of the Trust were vested in the Bombay Municipal Corporation, which thus became the lessor of the Sitaram Building property.

In 1948, in accordance with the pattern described in this paper, the Shri Bhatia Cooperative Housing Society acquired Sitaram Luxman's interest in the Sitaram Building and proceeded to occupy the premises as members of the Bhatia community.<sup>58</sup> They now pursued eviction proceedings through the Bombay Civil Court against one of the tenants of Sitaram Building, D.C. Patel, on the grounds that the latter was in arrears on rent payments. This last court found in favour of the Bhatia CHS. Attorneys for D.C. Patel appealed the decision to the High Court on two grounds: first that the City Civil Court had no jurisdiction over this particular matter. Second, that D.C. Patel was protected by the provisions of the Bombay Rent Act of 1947, and his rents were thus frozen at 1940 levels, and, thus, he was not in fact in arrears on his rent payments and there were no grounds for eviction proceedings against him. In essence, Patel's appeal rested on the second matter: if Sitaram Building was to be regulated by the Rent Act, then neither was he in arrears with rent payments nor was the case within the jurisdiction of the City Civil Court. (It would be under the jurisdiction of the Small Causes Court.) This argument, in turn, rested upon a critical point of interpretation: that the 'owner' of Sitaram Building was the entity which had the dominant interest in the building and land, that is the Bhatia CHS with its 999 year lease on the land and buildings, and not the Bombay Municipal Corporation. Determining the 'owner' of the property was crucial since the terms of the Bombay Rent Act excluded properties owned by 'government' organs – central, state, municipal or statutory bodies such as the Port Trust – from the protective umbrella of rent control. Thus, Patel's team's case rested upon establishing that the Bhatia CHS was the 'owner' of Sitaram Building, not the Municipal Corporation, and that thus Sitaram Building was subject to the provisions of the Rent Act. Patel's appeal at the Bombay High Court was successful, which ruled that Sitaram Buildings was governed by the Rent Act.

When the Bhatia CHS took the matter to the Supreme Court, however, the latter reversed the High Court's decision in favour of the Bhatia CHS. The arguments evoked by the Supreme Court Bench, which built upon the case mounted by the Bhatia CHS legal team, were striking. Rejecting the High Court's contention that the Bhatia CHS was owner since it had a 999 year lease on the land and building, the Supreme Court ruled that since the terms of the lease contained a variety of covenants and restrictions (some described above) imposed by the lessor, it was the lessor which had the 'dominant voice' and which in fact was the 'owner' of the property. If the lessor – the Bombay Municipal Corporation – was in fact the owner of the property, then as a local authority it – and the properties leased out by it – were exempt from the provisions of the Rent Act. This gave the Bhatia CHS the right to pursue eviction proceedings against D.C. Patel in the City Civil Court.

In this instance, then, it was in the interest of the Bhatia CHS to assert the ultimate interest of the Municipal Corporation (as successor of the Bombay Improvement Trust) over land and building, rather than its own ultimate proprietary right, in order for it to assert the more proximate proprietary right of reassessing the rent on D.C. Patel, or even of evicting him. To act as 'owner' of Sitaram Building, the Bhatia Cooperative Housing Society had to establish that in fact it was the Bombay Municipal Corporation that was the

ultimate owner of the building! In this instance, thus, the operative meaning of property was framed and constrained by legislation such as the Bombay Rent Act.

The Rent Act was only one of a series of legislations that served to constrain the meaning of ownership. In a fundamental sense, cooperative societies were closely linked to ideas of community as has been demonstrated by the pioneering role of first the Saraswats and then the Sindhis in the proliferation of such societies, and as was reflected in the framing of the Cooperative Societies Act. Since community-based societies strictly controlled admission into the CHS this meant that a flatowner's right to alienate his or her property was subject to the approval of the society.<sup>59</sup> Transfer of property was also subject to the peculiarities of Hindu and Muslim inheritance laws. Finally, a whole set of other legislations such as the Urban Land (Ceiling and Regulation) Act of 1976 further constrained the meaning of ownership of property in the city.

As indicated above, the Maharashtra Ownership of Flats Act of 1963 sought to define the ownership flat as a distinct form of property. The institution of standardized agreements addressed some of the more egregious malpractices. The MOFA also sought to stabilize the relationship between the ownership of flats and other forms of legislation such as rent control. However, the problematic relationship between land, buildings and dwellings did not go away. I turn now to consider the implications for the idea of urban property of this ongoing disjuncture.

### **Land, property and the ownership flat**

The preceding discussion of the Bhatia CHS case has already foregrounded the manner in which lands, buildings and dwellings disaggregate under conditions of multistorey, multi-family living in cooperative housing societies. Despite the attempts by the Maharashtra Ownership of Flats Act to clearly establish the legal status of the ownership flat as a form of private property, the tension between a conventional legal view of property as land, on the one hand, and the widespread practice of buying and living in ownership flats, on the other hand, was not entirely resolved. To illustrate some implications of the ongoing tension in the idea of property, I will discuss the strange (but not unusual) history of a building I will call Kailash Cooperative Housing Society.<sup>60</sup> This building was also an older building, originally a rental property on the Bombay Improvement Trust's Dadar–Matunga suburban estate, which was converted to ownership basis in the early 1980s. It stands on land that in the early twentieth century would have been swampy land in what would have been the edge of the city in about 1900. After the acquisition of the land by the Improvement Trust, sometime in the 1910s, the whole city was surveyed in the cadastral survey and the land was broken up into building plots and acquired a cadastral survey number, giving it a different kind of life. These plots were then auctioned off, at regular intervals. Meanwhile the Trust had readied the entire area for urban use: the land had been drained, streets had been laid and infrastructure such as water, sewage, gas and electricity networks had been provided.

The first leaseholder leased the plot in 1933 from the Bombay Municipal Corporation – which had taken over the estates of the Improvement Trust after the latter's folding in that same year – and had put up an apartment building with flats for rent. This was a ground plus two structure, which was what was permitted at the time, with three flats on each floor, making a total of nine flats.<sup>61</sup> The leasehold on the plot and the building itself changed hands a few times between 1933 and October 1979, when the last single owner of the property, Leelabai Shinde, sold it to Dikshit Builders, a small local building firm. Because of rent control legislation, the last owner was undoubtedly receiving very little by way of

rent and took what little money was to be had from the sale. That amount was very little: Rs 50,000 for the building and the leasehold on the land.<sup>62</sup> Dikshit Builders proposed to avail of unused Floor Space Index (which became available as a result of a change in the rules in the early 1950s, which permitted an additional floor) and construct a third floor with two additional flats.<sup>63</sup> Once this was done in 1981, they sold all the flats: the original flats to the original tenants at nominal prices, who now became owners of property for next to nothing, and the two new flats to new owners at market prices. Dikshit Builders were only in this deal for the third floor and the two new flats. The original tenants would have gone from tenants to owners for nothing – probably for a capitalized sum of 20 years of rent, which would have been fixed at 1940 rates by the rent act and thus would have been about Rs 40. Accordingly, they would have become owners for Rs 8000.<sup>64</sup>

In 2006, the society sought to avail of still more FSI made available as a result of further changes to the Development Control regulations and build a taller structure.<sup>65</sup> In a variation of the proceedings of 1981, each of the members of Kailash CHS would receive an incentive in the form of 50% more carpet area and would also receive a lump sum payment from the builder, in addition to a monthly payment to cover the costs of renting another flat during the construction period. They found, to their consternation, that the conveyance had not, so to speak, been properly conveyed. In the records of the Collector of Mumbai, the land was still registered in the name of Dikshit Builders.

When the members of Kailash CHS urged Dikshit Builders to investigate this situation, it turned out that the situation was even more complex and bizarre than it first appeared. While the Mumbai Collector's office still indicated Dikshit Builders as the lessee of the land, in the records of the Municipal Corporation of Greater Mumbai (henceforth MCGM), the holder of the land was listed as Leelabai Shinde, despite the fact that she had transferred the land to Dikshit Builders almost three decades ago, in 1979. An extraordinary correspondence between Dikshit Builders and the MCGM from the records of Kailash CHS indicates that Dikshit Builders appear to have made an attempt in 1985 and 1986 to convey the land and building over to Kailash CHS following the addition of the third floor and the sale of the ownership flats, but were informed by the MCGM that they were not in a position to convey the land because the land was still in the name of Leelabai Shinde in the MCGM's records.<sup>66</sup> To add insult to injury, the MCGM, after informing Dikshit Builders that their records showed the land still registered in the name of Shinde, nonetheless demanded ground rent arrears adding up to Rs 1807 from Dikshit Builders. For this reason, perhaps, Dikshit Builders had dropped their attempts to have the land properly conveyed to the Kailash CHS. The latter, meanwhile, in possession of a Deed of Assignment dated 28 January 1983 transferring the property from Dikshit Builders to the Kailash CHS, appear to have been unaware that such a Deed was not an effective instrument without corresponding changes in the records of the Collector's Office and the MCGM. Extraordinary as it might seem, as of this writing Kailash CHS did not feature as lessor in either of the city's two principal official records of property ownership. According to the Mumbai Collector, the land was still in the name of Dikshit Builders, while according to the MCGM, the land was in the name of the long-deceased Leelabai Shinde. The water bill was the only official record on which the name of Kailash CHS was featured. Very recently, however, Kailash CHS has secured an important document called the 'Index II', which amounts to an annexure to be attached to the property records in the Collector's office and which, on the strength of the Deed of Assignment between Dikshit Builders and the Kailash CHS, registers the latter's unmediated claim to the plot of land on which the Kailash CHS building stands.



It is hard to understand how this state of affairs continued for so long, but perhaps more perplexing still is the fact that all of this *simply did not matter* until Kailash CHS decided to go in for redevelopment. It is also certainly true that the Kailash CHS case was not unusual – indeed, some variant of this account, where the CHS does not have title to the land on which its building stands, might even be the norm.<sup>67</sup> In some cases, the builder involved in the construction of the structure (in the case of purpose-built ownership buildings) or the builder responsible for conversion of buildings from rental to ownership basis might not have secured the title to land to begin with. In such cases, they were not in a position to convey the land to the CHS, at least not without overcoming significant bureaucratic hurdles. Builders also seem to have been able to use their clout in the state legislature to stall and derail attempts to compel them to proceed as required with the conveyance.

The immediate implications of the conveyance situation need to be understood within the present-day context of Mumbai's housing market. As indicated at the beginning of this article, housing societies in older buildings have been offered strong incentives by the state (in the form of increased FSI) to redevelop and rebuild. In a market where housing prices are soaring, it has become increasingly commonplace for cooperative housing societies to avail of such incentives and for members to receive larger flats in new buildings with the added bonus, in some situations, of a cash payment. Given such circumstances, the lack of title to land has serious implications for middle class residents of buildings such as the Kailash CHS. For one thing, the CHS could not have proceeded, in principle, with any modifications to the building since they did not have the land conveyed in their name. (Now that they have the Index II annexure, the Kailash CHS may proceed with modifications.) Second, the actual lessee recorded in the books still possessed, in principle, the right to redevelop the building and avail of the newly available unused FSI. (Again, this would not be the case for Kailash CHS armed with the Index II.) In practice, societies are going ahead with redevelopment even though they do not yet have title to the land – and thus the right to transform structures upon the land – with the assumption (and risk) that any potential challenges posed by the official lessee could be countered in the courts. Furthermore, it is unlikely that official lessees of land underneath cooperative housing societies – if other than the societies themselves – could actually redevelop the building on their own terms without having such an attempt blocked by the CHS in court. However, what it does mean is that societies affected in this way are unable to mortgage the value of their building and land and raise the capital to renovate the building themselves and thus maximize their earnings potential. If they want to rebuild – as is increasingly the norm for older buildings looking to avail of new incentives offered by the state and a soaring property market – they must collaborate with another builder or developer who can finance the redevelopment, as Kailash CHS and scores of other societies are currently in the process of doing. The new collaborating builder/developer will provide the financing, but this will cut into the earnings of the CHS.

## Conclusion

The ongoing development and redevelopment of property in Mumbai to the tune of crores of rupees or billions of dollars, mostly in the absence of legal title to land, suggests an extraordinary divergence between the popular idea of 'real estate' and real property as understood by the law. When ordinary people speak of real estate, they are referring to apartments, flats or other forms of dwellings. The law, meanwhile, despite the efforts of the MOFA, has tended to continue to view real property in terms of land. For the most part, the popular understanding seems to be what matters, with actual possession

of an apartment counting for much more than any legal document establishing ownership. Despite having no official record of their claim to their land in either the Collector's Office or the MCGM, the members of Kailash CHS had been able to enjoy their property for more than two decades with no interference. At critical moments, though, such as when a redevelopment of the building was in the offing, the legalistic definition of property centering on land could suddenly challenge the ownership rights of the residents of Kailash.

Presumably builders have been able to resist attempts to get them to convey their lands for so long because they constitute a powerful political lobby as part of the reviled 'builder-politician nexus'. The passage of the deemed conveyance rules seems to suggest that the power of this lobby might be coming into question and, indeed, the first instance of a CHS actually getting a 'deemed conveyance' has now been recorded.<sup>68</sup> If the deemed conveyance represents a seeming triumph of flatowning middle classes, then, as Partha Chatterjee has asked, '[a]re Indian cities becoming bourgeois at last?'<sup>69</sup> In Chatterjee's well-known framework, Indian elites stepped into the shoes of colonial elites following Independence, but the relationship between elites and non-elites was governed by patron-client relationships rather than the abstract idea of a nominally equivalent citizenry. While elites constituted the 'citizens' of 'civil society', non-elites were apprehended as 'populations' of 'political society' whose demands increasingly needed to be accommodated in response to the compulsions of electoral politics, but who were never quite admitted into the citizenry. Politics unfolded as a sequence of engagements – sometimes confrontation, sometimes collaboration – between these spheres. The recent proliferation of gentrification in cities like Calcutta and Mumbai, expressed in sanitation and anti-encroachment drives, architectural heritage movements, and the emergence of segregated and protected spaces for the citizens of civil society, prompts Chatterjee to wonder whether, finally, a bourgeois view of the city – and thus of property – is imposing itself in urban India.

It has not been the purpose of this article to try to directly answer Chatterjee's question, but rather to reflect on the constitution of the bourgeois subject of civil society, and on the constitution of the distinction between civil and political societies in Chatterjee's sense. If one important aspect of the bourgeois subject is the ownership of property, then this article has suggested that, at the very least, more needs to be understood about the changing meanings of 'ownership' and 'property' in the context of the changing spatiality of cities such as postcolonial Bombay. In fact, this article has shown how the changing physical form of the city led to a divergence between the popular idea of property (apartments in multistorey buildings) and what the law continues to regard as real property (land and immovable property upon land). Such divergence suggests that the basis of citizenship in civil society looks different from the normative ideal invoked by Chatterjee in constructing his influential opposition between civil and political society. Paradoxically, it is the members of political society whose formerly illegal settlements are now being 'regularized' through Slum Rehabilitation Schemes, and who are now becoming members of cooperative housing societies, who might have a more secure title to their land and thus conform to the legal understanding of 'property owners'. The members of 80% of Greater Mumbai's cooperative housing societies who are awaiting deemed conveyance, meanwhile, ostensibly members of civil society, are actually on uncertain legal ground. A more focused consideration of the changing meaning of property thus adds to the burgeoning discussion of citizenship in postcolonial urban India. The changing physical conditions of housing in cities like Mumbai and the emergence of Ownership Flats in multistorey, multi-family apartment buildings suggest intriguing twists to and qualifications in Chatterjee's analytic framework.

This article has shown the contingent manner in which the Ownership Flat became the hegemonic form of dwelling in postcolonial Bombay. In the process, a shift took place in the popular perception: whereas previously 'property' was understood to mean land, now it came to mean the Ownership Flat. Yet for a while until the MOFA of 1963, from the legal point of view, real property continued to mean land. Despite the efforts of the MOFA, a tension endures between property-as-land and property-as-Ownership Flat. 'Unsettling property' in this way, as the geographer Nicholas Blomley has pointed out, has the effect of permitting us to see property more clearly as a bundle of social relationships among people rather than just as a relationship between persons and spaces.<sup>70</sup> By elaborating the changing nature of the spaces that were popularly understood to mean 'property', and thus disaggregating the meaning of property into land and the Ownership Flat, this article has sought to throw into relief the historically constituted and *social* nature of property rights. Understanding the historically constituted nature of property, in turn, enables us to pose questions of the imperatives that impart a sense of 'naturalness' to the ownership of property. In a preliminary way then, this article interrogates the kind of subject imagined by the postcolonial Indian state. While the hydroelectric projects of the First Five Year Plan and the capital goods-based industrialization of the Second Plan are well-known stories of the postcolonial state, this article suggests that the property-owning subject was a lesser-known but important narrative unfolding in Nehruvian India.

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### Notes

1. 'Just a 6 Month Wait to Get Deemed Conveyance'. *Hindustan Times*, September 28, 2010.
2. 'Now, Deemed Conveyance If Builder Holds Up Deed'. *Indian Express*, September 28, 2010.
3. Although the exact number of affected buildings is not clear, anywhere between 50% and 80% of cooperative housing societies in Greater Mumbai – representing tens of thousands of apartment buildings and hundreds of thousands, if not millions of people – are lacking title to land.
4. Rao, *House, But No Garden*, especially chaps. 3 and 4.
5. Raka Ray and Seemin Qayum's study of domestic labour in Calcutta discusses how multistorey living in flats, with its distinctive configuration of space, started to become commonplace in Calcutta only from the 1950s onward. Ray and Qayum, *Cultures of Servitude*.
6. Rao, *House, But No Garden*, chap. 5, contains an extensive discussion of the ways in which ideas of 'community' were re-structured around the cooperative housing society.
7. Classic works on colonial agrarian land revenue settlements – and thus the origins of agrarian property – include Guha, *A Rule of Property for Bengal* on the Permanent Settlement, Stein, *Thomas Munro*, on the Ryotwari Settlement in Madras, and Washbrook, 'Law, State and Agrarian Society in Colonial India'.
8. Sturman, 'Property and Attachments', and Glover, 'Construing Urban Space as "Public" in Colonial India', both show how liberal ideas of property are qualified by colonial Indian practices in Western India and Punjab respectively. Eric Beverley has recently shown how property was the context for blurring the boundary between civil law and personal law. Beverley, 'Property, Authority and Personal Law'.

9. For examples of the former mode of urban renewal, see Mukhija, *Squatters as Developers?* and Nijman, 'Against the Odds'. For an example of the latter see Mukhija, 'Property Readjustment and a Tenants' Cooperative in Mumbai'.
10. See Appadurai, 'Spectral Housing and Urban Cleansing', and Rao, 'The Future in Crisis'.
11. Much of this discussion has developed from Partha Chatterjee's distinction between civil society and political society, where legal occupation of land is one of the critical distinctions between the former and the latter. Chatterjee, 'On Civil and Political Society in Postcolonial Democracies'. For two elaborations of Chatterjee's distinction in the context of present-day Mumbai, see Anjaria, 'Guardians of the Bourgeois City', and Weinstein, 'Democracy and the Globalizing Indian City'.
12. In interrogating the way in which ownership presents itself as a 'settled' form of property, and in exploring the implications of 'unsettling' ownership, I draw upon the work of the geographer Nicholas Blomley. See especially his *Unsettling the City*.
13. Government of Bombay, *Greater Bombay Scheme*.
14. Government of Maharashtra, *Report of the Ownership Flats Enquiry Committee*.
15. Rao, *House, But No Garden*, chap. 5.
16. Conlon's *A Caste in a Changing World* is the classic account of this community.
17. Talmaki, 'A Popular Type of Housing Society'. Subsequent references to Talmaki's experiments with cooperative housing societies, unless otherwise noted, are from this article.
18. The 'rents' paid by members of the society went towards servicing the interest on the loans incurred for the cost of land and buildings as well as the cost of maintenance, while the small premiums went towards paying off a part of the principal on the loan. This resulted in a limited equity stake for the tenant.
19. The Parsis, who operated several societies in the suburb of Dadar from 1921 onward, embraced the limited equity model as well. The audited minutes of the Parsi Central Association Cooperative Housing Society indicate that no part of the funds borrowed from the Government were being used in so-called 'hire-purchase' schemes, which culminated in outright ownership. Pure rentals or limited equity arrangements were the norm. Parsi Central Association Cooperative Housing Society, *Annual Report for the Year 1939–1940*, 18.
20. 'The Saraswat Cooperative Housing Society, Limited: Its Origin and History', 5.
21. I am grateful to Matt Lasner for pointing out to me this similarity between early Bombay coops and co-ownership patterns in the United States in the early twentieth century. For a full account of various forms of multi-family co-ownership living in the United States, see his *No Lawn to Mow*.
22. Orr, 'Social Reform and Slum Reform', 812.
23. 'Cooperation in Bombay: Possibilities and achievements. Cooperative Conference proceedings', *Bombay Chronicle*, September 15, 1924, 5.
24. By 1925, after the boom, it was a complaint of cooperative societies that had emerged and erected buildings during the land price boom that they were being ruthlessly undercut by the same (formerly) rack-renting landlords who had raised rents during the boom. These posed serious problems for societies such as the Parsi Central Association Cooperative Housing Society, which had put up buildings during the boom when land, labour and materials were all expensive, and whose economic rents were correspondingly higher than those of private buildings erected before the boom. See, for instance, Parsi Central Association Cooperative Housing Society, *Annual Report for 1924–25*, 3–4.
25. The land price boom and the pattern of building in Bombay during the 1920s and 1930s is explored more fully in Rao, *House, But No Garden*, chaps. 3 and 4.
26. Rao, *House, But No Garden*, chap. 4.
27. 'Plight of Co-Op Housing Societies', *Bombay Chronicle*, November 12, 1937, 8. See also the editorial from a few days later: 'Cooperative Housing Societies', *Bombay Chronicle*, November 15, 1937, 7.
28. Government of Bombay, *Greater Bombay Scheme*, 42.
29. The term 'tenant-ownership' was used to describe a pattern where the occupants – usually of houses – owned their residences outright. The confusing conjunction of 'tenant' and 'ownership' suggests that the distinction between tenancy and ownership was not as strong as later became the case. 'Tenant-copartnership' schemes were the norm in apartment buildings and were the limited equity arrangements discussed earlier.
30. Government of Bombay, *Greater Bombay Scheme*, 43.

31. Ibid., 44.
32. The following account of the factors leading to the perception of crisis in the Bombay housing market by the late 1940s draws upon my book manuscript *House, But No Garden*, especially chap. 6.
33. See Ramachandran and Pillai, *The Bombay Rent Act and Housing Production*.
34. Bombay Municipal Corporation, *Annual Administration Report for 1955–56*, vii.
35. Batley, *Bombay's Houses and Homes*, 21.
36. Government of India, Planning Commission. *1st Five Year Plan*, para 16.
37. Government of Bombay, *Report of the Rent Act Committee*, 67.
38. Government of Bombay, Directorate of Publicity, *Bombay Marches On*, 4.
39. Ibid., 8, 9.
40. Interview, Gulab Gidwani, February 9, 2010. Mr. Gidwani came from Sindh as a boy of 15 in 1947 and has lived in Shyam Niwas since its inception. His uncles had been closely involved with forming the cooperative society.
41. As recounted to me by his son, Ramesh Sippy. July 29, 2007.
42. 'Appendix I. A List of Associations and Individuals Interviewed by the Committee', in *Report of the Ownership Flats Enquiry Committee*, 39.
43. Rajagopalan, *The Greater Bombay*, 72.
44. Ibid., 73. Emphasis added.
45. Ibid., 73–4.
46. This was pointed out by an 'expert' respondent to Ramachandran and Pillai's survey of the effects of rent control on housing production conducted in the 1960s. Ramachandran and Pillai, *The Bombay Rent Act and Housing Production*, 81.
47. *Report of the Ownership Flats Enquiry Committee*, 5.
48. 'Alleged Cheating on Promise of Flats', *Bombay Chronicle*, January 31, 1957, 3.
49. This trend was extensively documented by respondents to Ramachandran and Pillai's survey. Ramachandran and Pillai, *The Bombay Rent Act and Housing Production*, 53.
50. Ibid.
51. Ibid., 81.
52. *Report of the Ownership Flats Enquiry Committee*, 30–2.
53. In the early 1970s, the Government of Maharashtra passed the Maharashtra Ownership of Apartments Act to facilitate central government investment in apartment buildings in New Bombay, the satellite city then arising across the harbour. The MOAA-enabled condominium-type ownership, where the owner actually owned the physical flat. This was different from the cooperative society model, where the society collectively owned the physical structure and each member owned a share certificate. Condominium ownership under MOAA is only recently being deployed in Mumbai itself, usually in the case of older buildings that were formerly rentals but are now being converted to Ownership Flats.
54. *Report of the Ownership Flats Enquiry Committee*, 7.
55. Ibid., 8.
56. The following discussion of malpractices is taken from the *Report of Ownership Flats Enquiry Committee*, 8–10.
57. All details of the case are taken from the Supreme Court of India judgment of November 5, 1952, *Bhatia Cooperative Housing Society vs. D. C. Patel*, 1953 SCR 185. This was one of the first cases where the provisions of the 1947 Rent Control Act were tested and it went all the way up to the Supreme Court.
58. Subsequently referred to as Bhatia CHS.
59. Until the reframing of the legislation in the Maharashtra Cooperative Societies Act in 1961, CHSs were legally permitted to discriminate on the basis of community. The 1961 Act sought to ban such discrimination, but the practice continued. Recently, an important Supreme Court judgment essentially reversed the 1961 Act and reasserted the right of CHSs to discriminate on the basis of community. For a further discussion, see Rao, 'South Indians are like that only'.
60. I am grateful to the residents of this building for providing me with this information. All names have been changed.
61. Details of the original lease, the nature of structure built upon the plot and the successive owners of the building and lessee of the plot between 1933 and 1979 are from the 'Title Report' dated November 14, 1981. This document was prepared by the solicitor engaged by residents



- of the building to look into the history of the plot as the building was on the verge of going from rental to ownership.
62. From the 'Deed of Indenture' between the Leelabai Shinde, the last single owner of the building and Dikshit Builders, dated October 5, 1979, 5.
  63. Floor Space Index, or FSI, is the critical rule determining how high one may build on any given plot.
  64. The payment by tenants of 15 to 20 years capitalized rent to landlords as 'purchase price' for rent-controlled apartments became customary practice by the late 1970s. For another example of such an arrangement see Bharucha, 'Ghatkopar Society Is First to Get Deemed Conveyance'.
  65. Specific details of the incentive structure offered by the state can be found on the official website of the Maharashtra Housing and Area Development Authority: <http://mhada.maharashtra.gov.in/>. An example of how societies actually use these incentives can be found in Mukhija, 'Property Readjustment and a Tenants' Cooperative in Mumbai'.
  66. From exchange of letters between Ward Officer (Estates), MCGM, F North Ward, and Dikshit Builders, dated December 28, 1985, January 13, 1986 and January 30, 1986.
  67. Hence, the present situation where the majority of the city's housing societies do not have title to the land despite having been in existence for decades. In another publicly documented case, a cooperative society sought the conveyance from the builder from 1980 onward, when the building was first put up. The builder – one Hiraji Jamsandekar – stalled for 6 years until the Torana CHS filed a complaint in court. Since then, the builder continued to delay proceedings until 2003, for a staggering 17 years, until the court sentenced the builder to prison for 6 months. For more details of this *Bleak House*-like case, see Singh, 'Builder Jailed for Not Conveying Title to Society'.
  68. Bharucha, 'Ghatkopar Society Is First to Get Deemed Conveyance'. In this instance, the building was originally a tenanted structure put up in 1960 that had gone, in 1988, to a cooperative society ownership model. They had been trying to get their conveyance for more than 20 years.
  69. Chatterjee, 'Are Indian Cities becoming Bourgeois at Last?'
  70. Blomley, *Unsettling the City*, 6. Blomley cites E.P. Thompson in making this point about the fetishistic nature of private property.

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